Supreme Court of United States.

DECEMBER TERM, 1873.—No. 157.

HENRY BOYCE,
v.
THOS. S. TABB.
} In Error.

HENRY BOYCE,
pro se.

H. Polkinhorn & Co., prs., Washington, D. C.

Supreme Court of United States.

DECEMBER TERM, 1873.—No. 157.

HENRY BOYCE, v. THOS. S. TABB. } In Error.

This was an action brought by Thos. S. Tabb against Henry Boyce, the plaintiff in error, on a note of his for $2,500, and interest, dated at New Orleans in February, 1861.

This note is the remainder of the price of several slaves purchased by him at that period.

Suit was brought in the Circuit Court of the United States for Louisiana, and judgment given for the amount of the note and interest.

Among the proceedings had on the trial before the court and jury, was the following charge of his honor, the judge, in open court to the jury.

"That it is not a legal defense to a suit brought on a "promissory note executed in this State on the 13th of "February, 1861, by the holder against the maker there- "of, to allege and prove that such note was given as the "price or part of the price of slaves sold to the maker."

"That such sale was at the time lawful and valid in "said State, was a sufficient consideration for a note, and "that the obligation could not be impaired by laws of a

"State passed subsequently to the date thereof, and that "no law of the United States has impaired such obliga- "tion."

As in the opinion of the plaintiff in error, this charge was well calculated to mislead the jury, he took a bill of exceptions to it.

1*st.* He assigns as error the opinion that the obligation could not be impaired by laws of a State passed subsequently to the date thereof, and asserts that the State of Louisiana did pass such laws, and especially a fundamental law, or constitutional provision. (Art. 128.) "That contracts for the sale of persons are null and "void, and shall not be enforced by the courts of this "State."

And he asserts that this *did* impair an obligation arising out of this note.

2*d.* He assigns as error the statement and opinion that no law of the United States has impaired such obligation, and asserts that among other legislation of the United States subsequently, there was the proclamation of the President of the United States emancipating the slaves in the United States; the 14th amendment of the Constitution, and ohter acts of legislation in accordance therewith, liberating negro slaves and destroying their value as property, and that such acts *did* impair an obligation arising from such note.

Before proceeding further, it may be admitted that the property in the former slaves of the Southern States is utterly destroyed by the action of the Federal Government, and the action of the State Government of Louisiana, since the date of the note in February, 1861. This court has adopted as its settled jurisprudence that the general government had a right to do this under its

legitimate war powers. Miller vs. U. S., 11 Wallace, p. 268,—Tyler vs. Duprees, 11 Wallace, p. 331.

And, as if recognizing the vast amount of property extinguished, and the consequent amount of reclamations that might be made, as the party in power had the upper hand, it stipulated in one of the amendments to the Constitution *that these slaves should not be paid for;* thereby admitting them to be property, conceding the natural claims of just remuneration, and providing against it.

Nor was the action of the State Government of Louisiana less effective. It was required of them that they should make a new constitution; it blotted out *slavery;* it forbade suits like the present, and its oft repeated decisions since in its highest courts forbade such recoveries as this.

Strange to say, the very judge who delivered this charge to the jury (Judge Dureil) was the president of the convention that made this constitution. No one ever heard him make any proposal to modify this provision; the convention had *full control over it*,—what they would make property, or what they would not: they might legislate about slaves in the *present* or the *past.*

Why should they provide that *contracts for slaves should not be enforced?* No one was fool enough to make a contract about slaves then or in the future, so that this must have had reference *retrospectively* to a time when it was legal to buy and sell slaves as in *this case*,; otherwise it would have been absurd. There were many ex-slaves in the conventoin then! And, if possible, effect must be given to *all parts of a law* as well as to those of a *contract.*

Why should a State, in the exercise of its highest

powers in convention, be checked or supervised by Congress or this court, in regulating the condition of persons and of property? Every State in the Union except one had slaves as property. When it suited them, in the Northern and Middle States they emancipated them, some in longer and some in shorter periods. Who ever heard of their being interfered with by the Federal authorities? This is a matter for their own separate consideration. If a State emancipate the slaves within its limits they are free. If it forbid the payment of the price the counterpart of the slave sold, *it has a right to do so.*

There is a great deal of delusion in this phrase from the Constitution about violating the "obligation of a contract." It was inserted more with reference to the vicious state of finance then existing than to anything else. Every colony as well as congress had been issuing their bills of credit of different values. It was (as some of the members of the Convention said) to check those evils they fixed a standard of value, and made a provision of this kind to check different forms of repudiation then common. But it does not affect many qualities of contracts or obligations, some of which are innate as germs of dissolution in the *civil law*, and even the *common law*, differing as they materially do in many particulars.

The general proposition that, when a commutative contract of sale is made, if it is legal at the time, and subsequently the war power of the government is brought in to destroy the property sold, *before the price is paid*, that still the judicial branch of the government shall enforce that payment, and, if necessary, the same war power will compel obedience to the decree, after the reciprocal and corresponding obligation is destroyed,

at first blush shocks every idea of justice and common sense, whether of the unsophisticated and simple-minded, or the learned and profound, and places the executive or war-making power in contradiction with itself; and all to carry out an abstract dogma of the constitution supposed to be unbending. To produce such an effect, surely this dogma or principle must be misapplied. If the mind does not instinctively recoil from such a result, it is difficult to make it clearer by reasoning, as the circumstances are so extraordinary that we look in vain for precedents to shed light on it. Perhaps the nearest approach to it is the system of *feudal rights and tenures* swept out of existence by the French Revolution of the last century. Those institutions so extensively established in Europe during the middle ages were extreme in France. The lords of the manors, among other numerous seigniorial rights, had the exclusive right of keeping pigeons whilst their vassals could keep none. So many privileged classes were exempted from taxes and impositions to the State that those fell with crushing weight on the toiling millions, so much so, that it was estimated by some English writer of weight at that time, that the cultivator of the soil did not get more than four shillings out of the pound of what he produced! This enslave the great bulk of the population of France, made their condition worse than the most zealous abolitionist ever imagined the condition of the African slave to be in the United States. This was the great provocative to that Revolution, and the fury of the masses was directed mainly against those institutions and their upholders during the convulsion. But when they overthrew them, besides passing laws to prevent their revival, they determined not to pay for them or remunerate the privileged classes: they had more assignats and mandats to meet, than they could pay, so that like the successful

party here who was willing to pay the debt incurred by the contest, but not for the slaves emancipated by the public power. But the successful party in France was more consistent in its action. It would not in its tribunal allow an action of this kind. It forbade its courts taking jurisdiction or cognizance of such matters. It forbade its recording officers registering any titles pertaining to feudal contracts or privileges. And yet those rights had great value, thus ignored and disregarded. For instance, the feudal custom of Paris was the law of Lower Canada, and to some extent is so still. When, then, parliaments wanted some of those inconvenient privileges done away with, such as the right to mutation fees &c, they at the same time indemnified the lord of the manor for his seigniorial rights: this is well known.

When the majority in the British parliament finally carried the abolition measures in 1833, they indemnified the owners of slaves in these West India Islands to the extent of twenty millions of pounds.

It may be objected that this matter has already been decided by this court, in condemning the makers of such notes to pay them in other States. It does not follow that such a conclusion should be authority for Louisiana; her system of laws is very different from that of those States. If you take her own laws as expounded by her highest tribunal, they are uniform and consistent against the recovery of this note. In addition to this, a provision in the new constitution of Louisiana, No. 128, forbids this. These laws of the State are like those of France, against feudal rights, *consistent with themselves.* These laws are the laws of the domicil of the contract. Why should they not apply to it, and that exclusively? Bringing the suit in this court is a mere matter of *forum.* The

abstract laws are not changed. Now suppose the defendant to have been sued in his own State Court, his success would be certain.

As the price of those slaves was a much larger sum' suppose one of the notes made, had been in the hands of a citizen of Louisiana, He could not sue in the Federal Court. Now if the suitor in the latter court obtained a judgment on a separate note arising out of the same contract, what a contradiction! Why should a non-resident have such an advantage over a citizen? Both could not be just! It shows the wisdom of the rule of adhering in matters of *local law* to the decisions of the Supreme Court of the United States, as clearly and strongly stated by Chief Justice Taney, in one of his circuit decisions, and generally practiced on.

But, it is said this former decision is on the subject of *slave property;* granted, it does not follow that this is applicable.

Land is one of the great objects of municipal law.

Take the case of France before her Revolution; her lands were governed by the *feudal system* of law, and yet every province had a different variety of this law. The common law, or *Coutume of Paris*, differed from that of *Orleans;* that of Burgundy, differed from that of Normandy, from which the English get their law.

So it was of the Slave States about *Slavery*. The laws in Virginia and in Georgia, differed on this subject from those in Louisiana. Rome and Spain had numerous regulations about slaves transferred *to the latter*; for instance,the doctrine of *Redhibition*, *Stat u liber*, *Noxalaction*, *&c.*

It used to be said, during the agitation of slavery, by its opponents, that it was purely *local*, within the States

where it existed; that the other States had nothing to do with it, &c.

Now this question is so *novel in our jurisprudence* that this court ought not to become impatient at its reëxamination. Their Honors, on the bench at present, being all from States formerly *free*, cannot be supposed to be very familiar with the laws and regulations applicable to it. An additional reason why they should accept the construction put on those laws by the *local Supreme court*: there is no safety in anything else. It would imply grave mental responsibility and wonderful capacity that the members of this court should understand as well or better than the Judges of a single State, their own system of local law, and be equally at home in more than thirty systems of State laws.

There is *apparently* in this *contract of sale* no *resolutory* or *dissolving condition*. Let us see if one is *implied*.

This contract is both *commutative* and *reciprocal*. Civil Code of La., articles 1758 and 1761.

Contracts are dissolved after they are made by a *resolutory condition*, either *expressed* or *implied*.

"The dissolving condition is that which when accom-
" plished operates the revocation of the obligation, plac-
" ing matters in the same state as though the obligation
" had not existed."

Civil Code of La., art. 2040.

A resolutory condition is *implied* in *all* Commutative Contracts, to take effect in case either of the parties do not comply with his engagements, &c., &c. C. C., art. 2041.

Fouthier droit Civil Français, Liv. 3, pt. 3, des contracts, &c., Chap. 4, No. 503.

Finally, we divide conditions into *express* or *tacite*, which are also called "conditions of *fact*" or "of *law*."

Express conditions are those mentioned in the contract or testament, and which are applied to the obligation or testamentary disposition. Those are called conditions of *fact*, because their object are affirmative or negative events stipulated by the parties, &c.

Idem, No. 502.

The *tacit* conditions are those which exist tacitly in contracts or testaments, though not expressed. *Quae tacite usunt.* They are called *conditions of law*, because the law infers or supplies several, and others by the magistrate. Idem, 502.

The *tacite* conditions may be derived from three different causes:

1st. From the law which supplies them.

2d. From the nature of the contract, or those things that are the object of it.

3d. From the presumed intention of the contracting parties, or the testator, &c.

Idem, No. 503.

"In all cases the dissolution of a contract may be demanded by *suit* or by *exception*; and when the resolutory condition is *an event not depending on the will of either party*, the contract is dissolved of right; but in other cases it must be sued for," &c.

Civil Code, art. 2042.

Now apply this doctrine to the present case. Here is

a fortuitous event; an overpowering force brought to bear on this contract most unexpectedly.

At the time those slaves were purchased, President Lincoln had been stating to Mr. Stephens of Georgia, and others, that slave property was as safe as it had been under Washington. He was executing the Fugitive Slave Law even in Chicago. Were men to blame for having confided in those professions; and this conduct emanating from the head of the government? And yet that same government destroyed this property in a short time by the rude hand of war!

The reciprocal obligation of this commutative contract is gone, by a fortuitous and unexpected event. A third party—the government—has put an end to it. In the language of the last article, "It is dissolved of right." Hence the obligation of the contract, or legal tie which the party had to enforce it is gone. C. C. art. 1750. The *vinculum juris* is not only unloosed, it is utterly destroyed, and there is nothing left for this court but to say so.

We think these principles will be found aplicable to the case at bar.

Take commercial or common law even. The action of the government frequently annuls contracts between private parties without their agency.

It is said to be a universal rule that, if a contract, legal when made, becomes illegal before it is executed, it becomes thereby *wholly void*, as if it were illegal at the outset: and for the reason that the law cannot be called in to enforce a violation of itself. 1 Parsons on Shipping and Admiralty, p. 328. Obin vs. Insurance Co., of Pennsylvania, Cir. C. Rep. 312, 317, by Washington Judge.

On this head see 2 Parsons on contracts, 5th edition, pp. 673, 675. Abott on Shipping p. 595.

No doctrine is more familiar than that a declaration of war puts an end to *all contracts of affreightment* to the other belligerent country, and releases both parties to it, without any agency of theirs: and yet this is not considered "*violating the obligation of a contract!*" There was no expressed provision for this; it was a tacit and innate dissolving condition pertaining to the contract. It was an the subject of hiring the services of sailors, their officers and ship.

If war can thus dissolve a contract of common carriers, why cannot the same agency of war dissolve contracts about slaves, which is of the same nature, the employment of their services *for life*, instead of for a *limited time?*

But it is not worth while to dwell on so familiar a topic. Let us see how the *civil law* treats such matters, as *it* is to prevail as applicable to this contract. The contract of *hire* is of the same nature as the contract of *sale;* it is commutative and reciprocal.

The civil law of Louisiana, plans the hiring of lands and houses, the hiring of labor in all its forms, and the services of common carriers, all in the same chapters, as if of the same description, Chap. 2. Art. 2, 646, and subsequent. Civil Code Chap. 3. Art. 2, 716, and subsequent.

Fouthier, a distinguished writer on civil law, compares in a measure, the services of hired people to that of slaves whose services are for life; at least, there are many *legal* points of comparison. In Vol. 6. p. 191–'2. Nos. 183–'4–'5. Liv. 3. Fol. 3. Des. contracts, on the subject of what contracts are legitimate, and what not; what is in the range ot commerce and what not? ("Lois

du commerce,") lays it down that agreements contrary to the independence of persons, which tend to impose on one person perpetual services in favor of another person are illicit, because forbidden by Art. 686 of Code of France, No. 183, that any agreement, *a fortiori*, is illegal that tends to establish directly or indirectly the slavery of persons, or their attachment to a glebe; (idem No. 183,) but that all persons may engage their services for a time and for a price agreed upon; that such a contract (hiring) does not violate the liberty of persons in a manner forbidden.

It is true that in binding himself to do or not to do, a man gives up a portion of his liberty. But society could not subsist without such concessions, and the social pact is existing by each one giving up a portion of his liberty for the general good.

That any agreement to revive *feudal rights* or privileges is also illegal. No. 185.

If the tenant of a *feudal* estate has all his crop destroyed by events, or accidents of an extraordinary nature, such as the ravages of war, extending over a country, then at peace, &c., (C. C. Art. 2, 714,) he will be relieved from his contract. If during the lease the thing or object is totally destroyed by an unforseen event, or if it be taken for purposes of public utility, the lease is at an end. (C. C. Art. 2, 667.)

Without multiplying authorities, it is very plain that by the Civil Law, all those commutative contracts are dissolved by the *vis major*, or empowering force, and that the obligation being destroyed on one side, its reciprocal or co-relative is also destroyed on the other.

Whilst on this subject, a decision from the Common Law, State of Illinois, is referred to as reported in the newspapers, viz:

"The Supreme Court of Illinois has decided that where "property was insured against fire for five years, and the "first year's premium was paid in cash, and notes given "for the remainder, payable at intervals, and the Insur- "ance Company becomes insolvent, the consideration "for the notes fails, and nothing can be recovered "thereon."

Some stress seems to be laid on the waiver of defective consideration of the note, though this was with reference to a redhibitory defect in one of the slaves. Yet, regarding it as attempting to cover a *nullity*, the doctrine applicable to this is laid down in the Louisiana Code, Art. 2, 252, and others in the same paragraph. See also case of Marguerite C. Decuir, wife, v. Ovide Lejeune and others, 15th Annual Louisiana Reports, p. 569.

The contract was defective in 1866, when the consideration was waived.

See Fouthier, Droit Civil, vol. 8, chap. 6, sec. 1, on Recognitive and Confirmatory acts, No. 514, on those nullities that are absolute and relative. Those vices that render a contract null from motives of public order or public interest, as well as good morals, cannot be confirmed by any mode of ratification by either of the parties or both of them. The ratification is infected with the same vice as the act or contract attempted to be ratified.

Idem, vol. 8, *No.* 515.

It would seem useless to dwell on this matter any further. We think we have made out our case to be relieved from a very erroneous judgment, and submit the matter to the court.

HENRY BOYCE,
pro se.

Supreme Court of United States.

HENRY BOYCE
v.
THOMAS S. TABB.
} No. 157.

This was an action brought in the Circuit Court United States, for the District of Louisiana, on a promissory note for $2500, dated at New Orleans, 13th February, 1861, on which there was a verdict and judgment in favor of the plaintiff below, from which this writ of error is sued out.

ASSIGNMENT OF ERROR.

The charge given to the jury, that it was not a legal defense to show that the consideration of such a note was the price of slaves, as set forth in the bill of exceptions at p. 6.

The decisions of the Supreme Court of the State of Louisiana, declare all such contracts to be invalid, and were so when entered into. There is a constitutional provision declaring their invalidity, but the decisions are not rested on that provision, but in the inherent vice of the agreement itself.

These decisions as to the vice of the agreement are respected by this court, in cases brought under the 25th section; the court holding that they did not impair the obligation of a contract, but were declaratory only of the law at the time it was entered into.

The following is the opinion of this court in Worthy v. Marston, decided at last term, and not yet reported.

Mr. Justice SWAYNE delivered the opinion of the Court.

Palmer sued Marston in the District Court of the Parish of East Filiciana upon a promissory note made by Marston to James O. Fuqua, and by him endorsed to Palmer, dated October 1, 1863, for $1,687.53, and payable one day after date, with interest at the rate of eight per cent. per annum from date until paid. The defendant answered that $1,000 of the note had been paid, and that $949.25 of it was a part of the purchase price of an African negro claimed to be a slave, and that the slave had been freed by sovereign authority, and that hence the note, to the extent of the amount last named, was null and void.

The court held that, "whilst the law remains as pronounced by the late Supreme Court, in the case of Wainwright v. Bridges, and other cases, Fuqua, were he suing to recover the amount of the note, which is the subject of this controversy, would be defeated by this plea of failure of consideration. Therefore, the plaintiff must fail also." Judgment was given for the defendant. The case was appealed to the Supreme Court of the State, and that court affirmed the judgment.

In the opinion of the court, as drawn up by one of the judges, it is said:

"The balance of the note in suit in this action was clearly given in renewal of obligations arising from the sale of a slave, and is vitiated by this fact.

"It cannot be recovered under our jurisprudence, as settled in Wainwright v. Bridges, 19 Ann., 231, and the numerous cases which have followed that decision.

"Under the rule established in the case of Graves v.

Clark, 21 Ann., p. 567, it is immaterial whether the plaintiff became a holder before or after maturity.

"We have been asked by counsel to pass, in this case, upon the validity under the Constitution of the United States of the article 128 of the Louisiana constitution of 1868, which declares that contracts for the sale of persons are null and void, and shall not be enforced by the courts of this State.

"We do not feel it necessary to do this. The rule, that such contracts will not be enforced by the courts of this State, was established in our jurisprudence in the year 1867. It was firmly settled and repeatedly acted upon before the adoption of the constitution of 1868, and has been invariably adhered to ever since. The question whether this article 128 be valid or invalid as an act of legislation, and in relation to article 10 of the Constitution of the United States, may possess considerable speculative interest, but we do not perceive that it can, in this case, have a practical influence upon the result.

"For the reasons given it is ordered and adjudged that the judgment appealed from be affirmed with costs."

It thus appears that the provision of the State Constitution upon the subject of slave contracts was in no wise drawn in question. The decision was governed by the settled principles of the jurisprudence of the State. In such cases this court has no power of review. No right was claimed by either party under any State law or the Constitution of the States, which was resisted on the ground of repugnancy to the Constitution, or a treaty or law of the United States, the decision having been in favor of the validity of the right so asserted. There is certainly no foundation for such a complaint on the part of the plaintiff in error. In the absence of such a claim and decision we cannot take cognizance of the case. This element, which is indispensable to our jurisdic-

tion, is wanting. Substantially the same question arose in The Bank of West Tennessee v. The Citizens' Bank of Louisiana, heretofore decided at this term. The writ of error was dismissed for want of jurisdiction.

The same disposition must be made of this case. The writ of error is dismissed accordingly.

If the law of the land as declared by the Supreme Court of the State, renders such contracts invalid, the rule of decision when they are sought to be enforced in the Federal Courts administering justice in same State, must be the same.

P. PHILLIPS,
For Plaintiff in Error.

SUPREME COURT OF UNITED STATES.

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HENRY BOYCE,

Plaintiff in Error.

vs.

THOMAS TABB,

Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

SUPREME COURT OF UNITED STATES,

No. 157.

HENRY BOYCE,

Plaintiff in Error.

vs.

THOMAS TABB,

Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

The only question presented in this case is the correctness of the judge's charge to the jury, [Record, page 6,] which is in effect—

First.—That the contract sued on was valid when it was made.

Second.—That no State Law subsequently passed could impair its obligation.

Third.—That no law of the United States had impaired its validity.

That slavery existed in Louisiana when it was a colony of France and of Spain, and that after its cession to the United States it continued to exist, and was protected by law, and that contracts relating to it were enforced by the Courts of the Territory, State and United States, until it was abolished during the late civil war, are historical facts as notorious as any other in its history.

We were not prepared therefore for the statement made by counsel for plaintiff in error that the Supreme Court of Louisiana had decided that all contracts for the sale of slaves "are invalid and were so when entered into." This is a manifest error. No such decision was ever made by that Court. The first case in which the validity of such contracts in Louisiana was called in question was that of

Wainright vs. Bridges, 19 Louisiana Annual Reports, p. 234, decided in 1867.

A reference to the opinion in that case will show that it was not even contended by the defendant that *the contract was not valid* when it was made. The defense set up was "*the failure of consideration*" arising from the emancipation of slaves, by the Act of the Government, [13th Amendment to the Constitution, 1865,] page 236.

The decision of the Court was based on the same ground. The Court so far from declaring "such contracts were null *ab initio*, says expressly that when contracts of that character were entered into they had the sanction of law; they might then be judicially enforced," p. 239. Their decision was based exclusively on the theory that the *emancipation* of the slaves carried with it the annullment of all existing contracts relative to slaves. "We do not consider" says the Court, "the position maintainable that the effect of emancipation was merely to produce a change in the status of the slave, and not to render void the contracts relating to slaves," &c., p. 239. "The fiat of the sovereign is potent to release the contracting parties as well as to set the bondman free," p. 240.

The decree is in conformity to this theory. It does not pronounce the contract *null*, but that defendant "be released" from its obligation.

The same reasons were assigned in the cases subsequently decided in which this point arose.

See Gremillion vs. Crousillac, 19 Louisana Annual Report, p. 337.

Dranguet vs. Rost, 21 A. 538.

Nothing can be clearer therefore, than that this contract at the time it was made, was perfectly valid, and that any attempt to invade it by State Legislation would be an infraction of Art. 1, Sec 10 of the Constitution of the United States.

No such attempt had been made in 1867, when the decision in Wainright vs. Bridges was rendered, and if the Court had based their decision in that case on State Laws, as alleged by counsel for plaintiff in error, it would have been pure judicial legislation, certainly not *less* violative of the Constitution than legislation by the proper department.

9 Wall., 55, 56, ibid 485-6.

Such an attempt was however made in 1868. In that year a new Constitution was adopted, which contained a clause similar to those inserted in the Constitutions adopted the same year by the States of Georgia and Arkansas.

These latter have been, by this Court, pronounced to be unconstitutional.

White vs. Hart, 13 Wall., 646.
Osborn vs. Nicholson, ibid, 654.

The Louisiana clause must share the fate of its cotemporaries and relatives.

The correctness of the charge on the 1st and 2d points is therefore unquestionable. The case of Osborn vs. Nicholson is also decisive of the last point in the charge.

In that case it was held that contracts relating to slaves that were valid when made, were not impaired by the 13th Amendment to the Constitution.

From this statement it is clear, that the decisions of the Supreme Court of Louisiana on this last point are in direct conflict with those since rendered by this Court.

To ask this Court therefore to conform its decree to the former is simply to ask it to abandon its own interpretation of the 13th Amendment, and to adopt that of the Supreme Court of Louisana.

No such abandonment was intended in the case of Palmer vs. Marston.

The decision of the Louisiana Court in that case was simply a re-affirmation of the doctrine previously laid down in Wainwright vs. Bridges, to which it expressly refers, and the language used by it "whilst the law remains as it is pronounced in Wainwright vs. Bridges, and other cases," plainly indicates that they did not consider the point as definitively settled.

The record in that case not bringing the case within the terms of the 25th section of the judiciary act, it was dismissed by this Court for want of jurisidiction. But had the question of the interpretation of the 13th Amendment, in regard to contracts previously entered into, been properly presented in that case, there can be no doubt, we presume, that this Court would have adhered to the doctrine of Osborn vs. Nicholson.

Counsel for plaintiff in error finally claims that where the law of the land as declared by the highest Court of a State, decides a contract to be invalid, the Federal Courts must be governed by the decisions of the State Court.

The Supreme Court of Louisiana has never declared contracts for slaves invalid, but on the contrary, has asserted their original validity, coupled with the doctrine that such contracts had been annulled by the 13th Amendment. And though this Court has adjudged that such contracts were not so annulled, counsel for plaintiff in error maintains that the view held by this Court must be abandoned in deference to the State Court, whose decisions must prevail.

This is an attempt to apply the 34th Section of the Judiciary Act, 1789, Ch. 20, to this case. That the section named cannot be held to include cases like the present, but only cases involving State Laws and local usages, is determined by the following decisions.

Swift vs. Tyson, 16 Peters, 1.
Watson vs. Tarpley, 18 Howard, 520.
Austen vs. Miller, 5 McClean, 157.

Respectfully submitted,

L. L. CONRAD,

For Defendant in Error.

Supreme Court of the United States.

No. 21.

HENRY BOYCE, Plaintiff in Error,

vs.

THOMAS S. TABB.

But even if the original note was invalid for want of consideration, the Court will find at pages 3 and 4 of the Record an agreement or compromise, whereby, in consideration of time granted to him, the original defendant bound himself "to waive any defences arising out of the consideration of the note."

We submit that the extension of time was a sufficient consideration for this agreement.

C. M. Conrad,
Attorney for Defendant in Error.